IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 465 of 1999.

Date of decision: 7.3.2006.

State of H.P. ... Appellant

Versus

Kishori Lal … Respondent

Coram :

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. J.S. Guleria, Law Officer.

For the respondent: Mr. Bhupinder Gupta, Senior Advocate with Mr. Janesh Gupta, Advocate.

Deepak Gupta, J. (Oral):

This appeal by the State under Section 378 Cr.P.C. is directed against the judgment of the Chief Judicial Magistrate, Solan, in a Criminal Case No. 325/2 of 1995, decided on 16.6.1999, whereby the accused – respondent has been acquitted of having committed offences under Sections 336/506-B I.P.C. read with Sections 25/54/59 of the Arms Act.

The prosecution case is that on 16.7.1994 at about 4.15 PM complainant Shekhar Indu (PW-1) along with one Hari Ram (PW-2) were grazing their cattle on the Charand land. It is alleged that accused Kishori Lal suddenly came there and started abusing the complainant. He thereafter went to his house and returned with a gun. It is alleged that

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

he firstly fired a gun shot towards the complainant and thereafter, fired two gun shots towards the cattle belonging to the complainant. Shekhar Indu filed a complaint, on the basis of which the F.I.R. was lodged and investigation was conducted. During the course of investigation, the police seized his gun and three empty cartridges and the gun alongwith the empty cartridges were sent to CFSL for opinion.

The prosecution examined number of witnesses with regard to the incident. The complainant and PW-2 Hari Ram were the eye witnesses. PW-3 and PW-4 related to the recovery of the gun and cartridges. The police officials were examined to prove the sanction for prosecution and CFSL report. The learned trial Court on the basis of the evidence acquitted the accused. Hence, the present appeal.

I have heard Mr. J.S. Guleria, learned Law Officer for the State and Mr. Bhupinder Gupta, learned Senior Advocate on behalf of the respondent.

From the evidence on record it is clear that as far as PW-1 complainant is concerned, he has fully supported the prosecution case. However PW-1 in his cross-examination has admitted that there is long standing civil litigation between the parties regarding the land on which the alleged incident took place. The civil cases had been decided in favour of the accused who was held to be owner of the land upto the High Court. However, the complainant had approached the Hon'ble Supreme Court where an order of status quo had been passed. As far as PW-2 is concerned, he admits that his eye sight is weak and he is also heard of hearing. He has also admitted that there is long standing civil litigation between him and the accused.

These two witnesses admitted that there were about 25 other persons also who were grazing their cattle near about the site of the occurrence. It is also admitted by both these witnesses that about 25 other persons were also moving on the road adjoining the land. Therefore, about 50 independent witnesses had witnessed the incident. But none of these witnesses has been examined to support the prosecution case. The only two witnesses with regard to the incident who have been examined are admittedly having inimical relations with the accused. Therefore, their evidence cannot be accepted on its face value.

PW-4 Inder Singh and PW-5 Om Parkash have been examined to prove the recovery of the gun and empty cartridges recovered vide seizure memo vide Ext. PW1/B. Both the witnesses have turned hostile and have not supported the prosecution case. According to them, no gun or cartridges were produced by the accused in their presence. Even if it is assumed that the gun and cartridges were produced, the prosecution must prove that the gun was used in an illegal manner. Mere firing of a gun is no offence. It is only if it endangers any person or causes any injury to any person or his property that an offence is made out. The statement of PW-1 cannot be also accepted on its face value since as per his version, the accused could not even hit any of the cattle with his gun at close range. This casts a doubt on the prosecution story especially when the complainant and the main prosecution witnesses admittedly have long standing civil litigation with the accused.

The learned trial Court has also held that even the grant of sanction was not proper inasmuch as on 6.10.1994 the sanctioning authority i.e. the District Magistrate firstly passed an order of sanction. Thereafter, he withdrew the said order of sanction on the same day itself.

He later on passed another order of sanction in identical terms as the earlier order. These sanction orders are Exts. PW9/A and PW1/C. No explanation has come from the prosecution side as to why the sanction order which passed in the earlier part of the day was unilaterally withdrawn and the second sanction order was passed.

Keeping in view all the above facts and circumstances, I find that there is no merit in the appeal of the State, which is accordingly dismissed. The bail bonds of the accused are discharged.

(Deepak Gupta),
Judge

March 7, 2006
(BSS)